In the United States Bankruptcy Court
for the
Southern District of Georgia
Savannah Division

In the matter of:	)	
	)	Adversary Proceeding
LORENE ST. JAMES	)	
(Chapter 13 Case 95-41140)	)	Number 98-4179
	)	
Debtor	)	
	)	
	)	
LORENE ST. JAMES	)	
	)	
Plaintiff	)	
	)	
v.	)	
	)	
GEORGIA HIGHER EDUCATION ASSISTANCE CORPORATION	)	
	)	
Defendant	)	

MEMORANDUM AND ORDER

Plaintiff's plan of reorganization under Chapter 13 was confirmed on November 14, 1995. Plaintiff filed this adversary complaint on August 11, 1998, alleging that Defendant discriminated against her in violation of 11 U.S.C. § 525(c).[1] This Court has jurisdiction pursuant to 28 U.S.C. § 157 and 28 U.S.C. § 1334(b). Pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure, I make the following Findings of Fact and

[1] Plaintiff also complained that Defendant's actions violated the automatic stay of 11 U.S.C. § 362(a)(3). Plaintiff withdrew that contention at trial and relies solely upon Section 525(c).

Conclusions of Law.

FINDINGS OF FACT

Debtor applied for a student loan in the amount of $776.00 on April 8, 1991, and received the funds from the Georgia Student Finance Authority. Defendant Georgia Higher Education Assistance Corporation ("GHEAC") guaranteed the loan. Debtor used the loan money to attend South College in Savannah, Georgia. Debtor filed a petition under Chapter 13 on June 14, 1995. GHEAC filed a claim in Debtor's bankruptcy case in the amount of $1,482.08, which is to be paid in full under the plan after all secured, priority, and administrative claims are paid in full. At the time Debtor filed this complaint, GHEAC had not yet begun to receive disbursements from the Chapter 13 Trustee's office.

Debtor completed applications for student loans in 1996 and 1997, and received the loans applied for in order to attend Savannah State University ("Savannah State") in pursuit of a degree in social work. (Testimony of Lorene St. James). In July of 1998, Debtor electronically completed a 1998-1999 Student Aid Report Federal, Student Aid Program Information Request Form ("the SAR form") (Ex. P-1), and was informed by the Savannah State financial aid office that she needed to supply proof in the form of a "clearance letter" that she was not in default on her student loans. (Ex. P-3). Debtor had received such a letter in August of 1996 from Andrea Godette, a loan collection agent with the Georgia Student Finance Commission. The letter stated:

> This will serve as written documentation that your defaulted student loan obligation to the Georgia Higher Education Assistance Corporation is included in your Chapter 13 bankruptcy filed June 14, 1995 and we are awaiting payments under the plan.
>
> Georgia Higher Education Assistance Corporation treats the repayment term and amount provided for in your Chapter 13 plan as constituting satisfactory terms for a repayment agreement. Therefore, you are requalified for new title IV aid, provided you are otherwise eligible.

(Ex. P-2). Faith May, a financial aid counselor with Savannah State, testified that Debtor received loans in 1996 and 1997 because she obtained this clearance letter. However, Patricia Nelson, the default manager for GHEAC, testified that she had never seen the letter before and that any loans made in reliance on its representations were made in mistake.

As to the 1998 loan application in issue Savannah State denied the loan because GHEAC had noted the Debtor's default in her file. Lacking a clearance letter and because Savannah State must abide by federal regulations, the loan was denied because Debtor was shown to be in default on a prior student loan. The lender placing the default code on the SAR, in this case GHEAC, makes the decision to remove the notation of default.

GHEAC issued a policy statement in September 1996 specifically to address borrowers who are in Chapter 13 plans. The policy statement requires that to be considered in a satisfactory repayment status, six disbursements must be received by GHEAC from the Chapter 13 trustee, not merely six plan payments by the Debtor. This policy statement first

is based on federal regulations which define both default and payments. *See* 34 C.F.R. § 682.200.[2] Ms. Nelson then testified that the loans made to the Debtor in 1996 and 1997 were made "by mistake;" she further testified that those loans were not made by GHEAC but were made instead by the Georgia Student Finance Commission.

The parties agree that disbursements from the Chapter 13 Trustee to GHEAC should have begun in April and that the issue will be moot by September as to future loans from the Defendant. Debtor is current in her payments to the Trustee.

CONCLUSIONS OF LAW

11 U.S.C. § 525(c) provides, in pertinent part:

> A governmental unit that operates a student grant or loan program and a person engaged in a business that includes the making of loans guaranteed or insured under a student loan program may not deny a grant, loan, loan guarantee, or loan insurance to a person that is or has been a debtor under this title . . . because the debtor or bankrupt is or has

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[2] 34 C.F.R. § 682.200 provides the following definitions:

> Satisfactory repayment arrangement.
> (1) For purposes of regaining eligibility under S. 682.401(b)(4), the making of six (6) consecutive, on-time, voluntary full monthly payments *on a defaulted loan*. A borrower may only obtain the benefit of this paragraph with respect to renewed eligibility once.
> (2) For purposes of consolidating a defaulted loan under 34 CFR 682.201(c)(1)(iii)(C), the making of three (3) consecutive, on-time, voluntary full monthly payments on a defaulted loan.
> (3) The required full monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. *Voluntary payments are those payments made directly by the borrower*, and do not include payments obtained by income tax off-set, garnishment, or income or asset execution. On-time means a payment received by the Secretary or a guaranty agency or its agent within 15 days of the scheduled due date.

(emphasis supplied).

> been a debtor under this title . . . , has been insolvent before the commencement of a case under this title or during the pendency of the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title.

The debtor must prove, therefore, (1) that the defendant is a governmental unit operating a student loan program; (2) that the defendant denied the debtor a grant, loan, loan guarantee or loan insurance; and (3) that the defendant did so because the debtor filed for bankruptcy protection. This Court has been unable to locate any published cases concerning the breadth of Section 525(c), and therefore considers this matter to be an issue of first impression.

Prior to the addition of Section 525(c) to the Code in 1994, courts were split as to whether the denial of a student loan implicated the anti-discrimination provisions of Section 525. Most courts found that the making of a loan, or the extension of credit, was not sufficiently like the other benefits articulated in Section 525(a) to warrant protection under that section.[3] *See* In re Goldrich, 771 F.2d 28, 31 (2d Cir. 1985). Congress amended Section 525 in 1994 to add subsection (c), for the express purpose of overruling Goldrich. *See* 140 Cong. Rec. H. 10,764 (daily ed. Oct. 4, 1994). The legislative history of the amendment

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[3] Section 525(a) provides, in pertinent part:

> [A] governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act . . . , or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

makes clear Congress's intent that subsection (c) be read in a similar manner as the rest of Section 525:

> Like section 525 itself, this section is not meant to limit in any way other situations in which discrimination should be prohibited. Under this section, *as under section 525 generally*, a debtor should not be treated differently based solely on the fact that the debtor once owed a student loan which was not paid because it was discharged; the debtor should be treated the same as if the prior student loan had never existed.

140 Cong. Rec. H. 10,764 (emphasis supplied).

GHEAC concedes that it is a governmental unit of the State of Georgia which guarantees student loans; the first required element is therefore not in dispute. Debtor's case fails, however, on the second and third elements.

Debtor has not shown this Court that GHEAC "denied" her a loan or loan guarantee within the meaning of Section 525(c). The only action taken by GHEAC which is in dispute is the placing of a notation of default on Debtor's National Student Loan Database record. GHEAC was not involved in any way with the transaction between Debtor and Savannah State University in July and August of 1998. SSU is a direct lender which receives loan guarantees directly from the federal government. GHEAC neither denied a loan to Debtor, nor denied a guarantee of a student loan in conjunction with the application in 1998.

It is true that Section 525 was intended to be read broadly; I cannot conclude, however, that the section can be read so broadly as to implicate a third party to a loan transaction whose only involvement in the transaction was a communication placed on Debtor's record one year prior to bankruptcy and four years prior to the application at issue. The notation of default was not placed on Debtor's record because of the bankruptcy; rather, the default was noted pre-petition because Debtor had not made timely loan payments.

Moreover, even if I held that Defendant denied a protected benefit to Debtor, I cannot conclude that Defendant did so because Debtor is in a Chapter 13 bankruptcy. The regulations on which Defendant relied in refusing to provide Debtor with a clearance letter are mandated by federal statute and promulgated under its authority. *See* 20 U.S.C. § 1078-6;[4] 34 C.F.R. Subt. B, Ch. VI, Pt. 600. The requirements on student loan borrowers under these regulations are applied without regard to whether the borrower is in bankruptcy or not. The legislative history for Section 525(a) states specifically:

> [Section 525] does not prohibit consideration of other factors, such as future financial responsibility or ability, and does not prohibit imposition of requirements such as net capital rules, *if applied nondiscriminatorily*.

S.Rep. No. 989, 95th Cong., 2d Sess. 81 (1978) (emphasis supplied). I find that such consideration is permissible as well under Section 525(c), and that requirements which are

[4] "Each guaranty agency shall establish a program which allows a borrower with a defaulted loan or loans to renew eligibility . . . *upon the borrower's payment of 6 consecutive monthly payments*." (emphasis supplied).

imposed nondiscriminatorily on student loan borrowers do not violate the Bankruptcy Code. *Cf.* In re Rusnak, 184 B.R. 459, 467 (Bankr. E.D.Pa. 1995) (exclusion of bankruptcy debtor from Medicare program for defaulting on student loans does not violate Section 525 where government followed statutorily required procedures initiated months before bankruptcy filing).

CONCLUSION

Because GHEAC placed a default notation on Debtor's student loan records through the imposition of nondiscriminatory requirements, I find that GHEAC's refusal to provide a clearance letter or remove the default notation does not violate Section 525(c).

O R D E R

IT IS THEREFORE THE ORDER OF THIS COURT that the complaint of Lorene St. James against Georgia Higher Education Assistance Corporation is dismissed.

Lamar W. Davis, Jr.
United States Bankruptcy Judge

Dated at Savannah, Georgia

This ____ day of June, 1999.